

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAROLYN RYGG, et al.,

Plaintiffs,

v.

DAVID F. HULBERT, et al.,

Defendants.

CASE NO. C13-0864JLR

ORDER GRANTING MOTION
TO DISMISS

Before the court is a motion to dismiss brought by numerous Defendants against Plaintiffs Carolyn Rygg and Craig Dilworth. (Mot. (Dkt. # 9).) The Ryggs' complaint, in many respects, simply repeats claims previously brought by the Ryggs in an earlier-filed action. In the previous action, the court dismissed these same claims for lack of subject matter jurisdiction. The court still does not have subject matter jurisdiction over these claims and accordingly GRANTS Defendants' motion to dismiss these claims. This leaves no federal claims in the case, and the court declines to exercise supplemental

1 jurisdiction over the remaining state law claims. Accordingly, the court GRANTS the
2 motion to dismiss and DISMISSES the Ryggs' complaint without prejudice.

3 I. BACKGROUND

4 This case is a new iteration of a dispute that began in 2004 and has spawned
5 multiple lawsuits in both state and federal court. (*See* 7/19/13 Order (Dkt. # 4) at 1.) In
6 the previous iteration, the Ryggs brought 50 claims against multiple defendants including
7 their neighbors, numerous attorneys, and numerous Washington State judges. (*Rygg, et*
8 *al. v. Hulbert, et al.*, No. C11-1827JLR, Am. Compl. (Dkt. # 7).) In that action, the
9 Ryggs alleged a vast conspiracy to deprive them of justice and property, to invade their
10 privacy, and to violate state and federal law. (*See id.*) The court dismissed 48 of the
11 Ryggs' 50 claims on a motion to dismiss. (*Rygg, et al. v. Hulbert, et al.*, No. C11-
12 1827JLR, 7/16/12 Order (Dkt. # 104).) The remaining two claims went to trial before a
13 jury, which returned an almost immediate verdict for Defendants Larry and Kaaren
14 Reinertsen. (*See Rygg, et al. v. Hulbert, et al.*, No. C11-1827JLR, Jury Verdict (Dkt.
15 # 315).)

16 The Ryggs filed this new action during the lead-up to trial in the earlier action.
17 The Ryggs claim they were forced to file this new action because the court denied their
18 motion to amend in the previous action. (Mot. to Recuse (Dkt. # 14) at 2.)

19 This new complaint is materially similar to the previous one. In particular, the
20 Ryggs name as defendants in this action many of the same defendants from the prior
21 action. (Compl. (Dkt. # 1) at 2-3.) The only new defendants in this action are attorneys
22 from the prior action: Cory Rein, Patrick Vail, Geoffrey Gibbs, and Ian Johnson. (*See*

1 *id.*) The new action, like the old action, asserts claims against at least five judges from
 2 the Washington State Court of Appeals, six judges from the Washington State Supreme
 3 Court, many of the Ryggs' neighbors, and numerous attorneys who represented
 4 defendants in prior actions. (*Id.*) They also assert similar causes of action as in the
 5 earlier action, including many that are virtually identical to those found in the earlier
 6 complaint. The Ryggs' causes of action include: (1) "Set aside 2005 Judgment as Void
 7 Because Hulbert Not a Judge in 2005; Enjoin Future State Court Process on Void
 8 Judgment" (based on due process, equal protection, and state law); (2) "Fraud in Creating
 9 Back-Dated Orders Not in Existence in 2005-March of 2012"; (3) "Fraud on Federal
 10 Court"; (4) "Joint Use of Information Obtained By Electronic Eavesdropping"; (5)
 11 "Abuse of Process/Deprivation of Property Rights Without Due Process"; (6) "Assault
 12 and Battery"; (7) "Fraud on State Court"; (8) "Action to Restore Lost Monument/Clear
 13 Cloud on Title"; (9) "Abuse of State Court Proceedings to Harass and Injure Plaintiffs";
 14 (10) "Violation of 1st Amendment Right by Retaliating Against Plaintiffs' Counsel to
 15 Deprive Ryggs of Counsel"; and (11) "State Statute Allowing Unpublished Decisions is
 16 Repugnant to 14th Amendment to the U.S. Constitution; Declaratory and Injunctive
 17 Relief" (based on equal protection, due process, First Amendment, overbreadth and
 18 vagueness). (*Id.* at 6, 8, 10, 15, 21-23, 30, 35, 37, 39.)

19 The court stayed the case sua sponte, holding that a stay was appropriate given the
 20 unique background of this case and the potential hardship on Defendants:

21 Defendants would suffer substantial hardship from being forced to defend a
 22 second action so similar in character to the one that [preceded] it. Indeed, if
 this case is allowed to move forward in ordinary fashion, there is nothing to

1 stop the Ryggs from continually bringing new lawsuits against the same
 2 defendants over and over for years to come, adding a handful of new
 allegations and legal theories each time.

3 (7/19/13 Order at 4.) The court held that all proceedings would be stayed, but that
 4 Defendants would be permitted to file a single joint motion to dismiss and Plaintiffs
 5 would be permitted to respond. (*Id.* at 1.) This motion to dismiss followed.

6 II. ANALYSIS

7 A. Lack of Subject Matter Jurisdiction—Counts 1-3, 14-18

8 The court lacks subject matter jurisdiction to hear most of the Ryggs' claims. The
 9 central problem with the Ryggs' complaint is that it simply repeats many claims that the
 10 court dismissed in the previous action,¹ and the same logic that compelled the court to
 11 dismiss the claims in the previous action applies here too.

12 Indeed, eight of the causes of action that appear in this new complaint also
 13 appeared in the previous complaint. In particular, Counts 1- 3 ("Set Aside Judgment as
 14 Void Because Hulbert Not a Judge in 2005; Enjoin Future State Court Process on Void
 15 Judgment") duplicate Counts 1-3 in the first action ("Set Aside 2005 Judgment as Void
 16 Because Hulbert Not a Judge in 2005; Enjoin Future State Court Process on Void
 17 Judgment"). (*Compare* Compl. at 5-7 with *Rygg, et al. v. Hulbert, et al.*, No. C11-
 18 1827JLR, Am. Compl. at 18-21.) Likewise, Counts 14-18 duplicate Counts 14-19 in the
 19 earlier action. (*Compare* Compl. at 35-40 with *Rygg, et al. v. Hulbert, et al.*, No. C11-

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 21 ¹ The claims may also be precluded by the doctrine of "claim splitting"—a relative of the
 22 res judicata doctrine. *See Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir.
 2007). However, the court will not address this question in the absence of subject matter
 jurisdiction.

1 1827JLR, Am. Compl. at 88-94.) These eight causes of action are identical in substance
2 to the corresponding causes of action contained in the prior complaint, and the parties are
3 all either the same or have an identity of interests with respect to the claims at issue.

4 In the prior action, the court dismissed all of the claims in question for lack of
5 subject matter jurisdiction. (*Rygg, et al. v. Hulbert, et al.*, No. C11-1827JLR, 7/16/12
6 Order.) The court dismissed Counts 1-3 for lack of subject matter jurisdiction because
7 the claims failed to state a cognizable legal theory and were contradicted by judicially
8 noticeable public records. (*Id.* at 48-49.) Likewise, the court dismissed Counts 14-19
9 under the *Rooker-Feldman* doctrine, which “bars suits ‘brought by state-court losers
10 complaining of injuries caused by state-court judgments rendered before the district court
11 proceedings commenced and inviting district court review and rejection of those
12 judgments.’” *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2008) (quoting *Exxon*
13 *Mobil Corp. v. Saudi Basic Industr. Corp.*, 544 U.S. 280, 284 (2005)). Again, the court
14 held that it lacked subject matter jurisdiction over those claims. (*Rygg, et al. v. Hulbert,*
15 *et al.*, No. C11-1827JLR, 7/16/12 Order at 20-21.)

16 These claims have resurfaced in this new action, but no relevant facts have
17 changed: the court still does not have subject matter jurisdiction to hear them. The
18 Ryggs have alleged no new facts with respect to these claims that would give the court
19 subject matter jurisdiction where it had none before. (*See* Compl.) The court
20 incorporates the analysis from its prior order into this order. The claims in this case are
21 largely the same, so the same reasoning applies. As such, the court is without jurisdiction
22 to hear Counts 1-3 and 14-18 and DISMISSES those claims without prejudice.

B. Count 13

In Count 13 of their complaint, the Ryggs nominally assert a First Amendment claim. (Compl. ¶¶ 184-88.) They assert that they “have a right to counsel of their choice” (*id.* ¶ 185) and that their “right to free speech and to petition the government are infringed” on account of disciplinary action taken against their attorney in a separate matter (*id.* ¶¶ 186-87). Indeed, the Ryggs’ attorney in this action was recently suspended from the practice of law. (*See In re Matter of Starczewski*, No. 2:13-rd-00082-MJP, 9/20/13 Order (Dkt. # 8).) The Ryggs are correct that civil litigants have a First Amendment right to be represented by counsel of their choice. *See, e.g., Hart v. Gaioni*, 261 Fed. Appx. 66, 67 (9th Cir. 2007) (unpublished). But they do not have a protected First Amendment right to be represented by an attorney who is suspended from the practice of law. *See, e.g., In re Gopman*, 531 F.2d 262, 268 (5th Cir. 1976); *Thoma v. A.H. Robins Co.*, 100 F.R.D. 344 (D.N.J. 1983); *Matter of Grand Jury Proceedings*, 428 F. Supp. 273, 277-78 (E.D. Mich. 1976); *Kremer v. Stewart*, 378 F. Supp. 1195 (E.D. Pa. 1974); *Hartman v. Cmmr. of Internal Revenue*, 65 T.C. 542, 542-43 (Tax Court 1959); *cf. United States v. Gonzalez-Lopez*, 548 U.S. 140, 151-52 (2006). The Ryggs request that either (1) the disciplinary proceeding against their attorney be stayed or (2) their attorney be allowed to continue to represent them while she is suspended. (Compl. ¶¶ 187-88.) The Ryggs have presented no authority in support of this claim and have not stated a cognizable legal theory showing that they are entitled to this relief. Accordingly, the court DISMISSES Count 13 without prejudice.

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C. The Court Declines to Exercise Supplemental Jurisdiction Over the Remaining State Law Claims

The only claims left in this case are state law claims. The claims discussed above have all been dismissed and the Ryggs voluntarily dismissed Counts 5 and 6. This leaves Count 4 (fraud), Count 7 (abuse of process),² Count 8 (assault and battery), Count 9 (fraud), Counts 10 and 11 (action to restore lost monument/clear cloud on title under RCW 58 .04.020), and Count 12 (“abuse of state court proceedings”).

If a district court has dismissed all claims over which it has original federal jurisdiction, “[t]he district court[] may decline to exercise supplemental jurisdiction over” the remaining state law claims. 28 U.S.C. § 1367(c). In evaluating when it is appropriate to exercise supplemental jurisdiction, courts should consider “the values of judicial economy, convenience, fairness, and comity.” *Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). When the federal claims have dropped out of a case early, the court ordinarily “should decline the exercise of jurisdiction by dismissing the case without prejudice.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). This is not a mandatory rule, but “in the usual case in which all federal-law claims are eliminated before trial,” the court should dismiss the state law claims as well. *Id.* at 350 n.7; *Reynolds v. Cnty. of San Diego*, 84 F.3d 1162, 1171 (9th Cir. 1996).

² The Ryggs call this cause of action “Abuse of Process/Deprivation of Property Rights Without Due Process” (Compl. at 21), but it is clear this is not a due process claim as that term is usually understood. It is an abuse of process claim. (See Compl. ¶¶ 129-36.) The Ryggs have not alleged that any government actor deprived them of due process, nor have they described anything that resembles an actual due process claim. The court will not treat this abuse of process claim as a federal due process claim.

1 The court declines to exercise supplemental jurisdiction over the remaining state
2 law claims. Here, the federal claims have dropped out of the case at the earliest possible
3 stage. The court has invested no time and energy in the state law claims other than time
4 spent on similar claims in the previous action. Thus, judicial economy does not suggest
5 deviating from the ordinary course. *See Reynolds*, 84 F.3d at 1171. Likewise,
6 convenience does not favor retaining supplemental jurisdiction because the state claims
7 “may easily be carried across the street to the courtroom of a state superior court judge.”
8 *Schneider v. TRW, Inc.*, 938 F.2d 986, 997 (9th Cir. 1991). With respect to fairness and
9 comity, there are no salient considerations that counsel in favor of keeping these purely
10 state law claims in federal court. Accordingly, the court follows the ordinary path in
11 cases where all federal claims are dismissed in the early stages, declines to exercise
12 supplemental jurisdiction, and DISMISSES the remaining state law claims without
13 prejudice.

14 III. CONCLUSION

15 For the foregoing reasons, the court GRANTS Defendants’ motion to dismiss
16 (Dkt. # 9) and DISMISSES the Ryggs’ complaint without prejudice.³

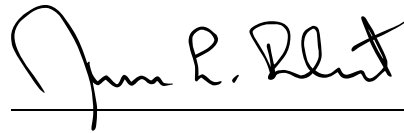
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21 ³ The court also denies the Ryggs’ pending motion for Rule 56(d) discovery (Dkt. # 32).
22 The Ryggs ask for discovery with respect to Defendants’ assertion of Anti-SLAPP statutes.
Since the court does not reach the Anti-SLAPP arguments, discovery is unnecessary.

1 Dated this 12th day of November, 2013.

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4 JAMES L. ROBART
United States District Judge